

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 13-38 and 40-54 are pending after entry of the amendments set forth herein.

Claims 13-38 and 40-54 were examined. Claims 13-38 and 40-54 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

In the Official Action of September 24, 2008, only claims 29 and 30 were rejected under any specific grounds of rejection. Although the other pending claims were listed on as being rejected in the Office Action Summary, the body of the Office Action contains no specific rejection of claims 13-28, 31-38 or 40-54. M.P.E.P. 707.076(g) prohibits piecemeal examination and states that the examiner should reject each claim on all valid grounds available, avoiding, however, undue multiplication of references. Accordingly, the Examiner is respectfully requested to withdraw the Official Action dated September 24, 2008 and issue a complete, replacement Office Action that specifically treats each of the presently pending claims.

Claims Rejected Under 35 U.S.C. Section 103(a) (Deckman et al. in view of Chin)

Claims 29-30 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Deckman et al., U.S. Patent No. 5,984,867 in view of Chin, U.S. Patent No. 5,676,636. The Examiner asserted that Deckman et al. disclose a main body 22, 102 configured to rest against the frontal body of a patient and a lifting arm 40 rotatably mounted to the main body, as set forth in column 4, lines 46-50. Applicants respectfully traverse. Column 4, lines 46-50 of Deckman et al. disclose: "The blade element 42 also is preferably rotatable relative to the link member 74 about an axis passing thought the mounting

pin 90 to positively engage and evenly distribute the load on the ribs and soft tissue.” Accordingly, it is noted that Deckman et al. discloses nothing about a main body 20, 122 or a lifting arm 40 at column 4, lines 46-50, contrary to the Examiner’s assertions. In the “Response to Amendment” section of the Office Action on page 5, the Examiner indicated that Deckman et al. at column 7, lines 53-67 should have been referenced instead of column 4, lines 46-50. However, column 7, lines 53-67 refer to Figs. 5 and 6 and these figures do not show a reference numeral 40, nor does column 7, lines 53-67 disclose anything about reference numeral 40, contrary to the Examiner’s assertions.

Furthermore, it is respectfully submitted that reference numeral 102 of Deckman et al. does not refer to the “main body” of the retractor as asserted by the Examiner, but rather refers to a stabilizing foot that is coupled to a column 104, see column 5, lines 55-60. The column 104 is movably engaged with a beam 110 that is fixed relative to blade element 42, see Figs. 5 and 6.

Applicants further respectfully submit that Deckman et al. fails to teach or suggest, and is also not adapted to engage a lower surface of edge of the lowest rib of the patient in order to perform the lifting function. As shown in Fig. 12, Deckman et al. engages the blades between adjacent ribs of a patient. The retractor of Deckman et al. is not configured to engage the lowermost rib from a lower surface or edge of the rib and lift it. Nor would this be possible, since the oppositely facing blade on the opposing arm of Deckman et al. would then be facing the abdomen and would have no rib structure to engage.

The Examiner referred to Chin as teaching use of a lifting arm rotatably mounted to a main body and adapted to engage a lowermost edge of a lowest rib of a patient to impart a lifting force. However, the main body 112 of Chin’s apparatus (see Fig. 12) cannot be maintained against the frontal body of the patient as claimed, but must be lifted away from the body in order to provide the lifting force to retractor bars, see column 7, lines 29-32 and 61-67; Fig. 12, #116 and Fig. 8, #200.

The Examiner asserted that it would have been obvious to modify the device of Deckman et al. as taught by Chin, to impart a lifting force to the ribs and sternum via the retractor bars. And maintain a lifting throughout the duration of the procedure. Applicants respectfully traverse, as this would require a complete replacement of the apparatus of Deckman et al. with that of Chin. Further, even if it would have been obvious to modify Deckman et al. as suggested by the Examiner, which Applicants do not agree that this would have been obvious for at least the reason provided above, Chin does not disclose or render obvious how a lifting force can be applied to the retractor bars without actually lifting the main body, that the retractor bars are attached to, away from the body. Rotation of the retractor bars of Chin does not cause the lifting motion. Rather, the main body 112 must be lifted up and away from the body

of the patient.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 29-30 under 35 U.S.C. Section 103(a) as being unpatentable over Deckman et al., U.S. Patent No. 5,984,867 in view of Chin, U.S. Patent No. 5,676,636, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 103(a) (Deckman et al. in view of Asrican)

Claims 29-30 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Deckman et al., U.S. Patent No. 5,984,867 in view of Asrican, U.S. Patent No. 3,680,546. It is respectfully submitted that Asrican fails to make up for the deficiencies of Deckman et al. in meeting all of the recitations of claim 13. Accordingly, since claims 29-30 depend from claim 13, it is respectfully submitted that claims 29-30 are allowable for at least the same reasons provided above with regard to claim 13.

Accordingly, in view of the above remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 29-30 under 35 U.S.C. Section 103(a) as being unpatentable over Deckman et al., U.S. Patent No. 5,984,867 in view of Asrican, U.S. Patent No. 3,680,546, as being inappropriate.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

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The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-008CON2.

Respectfully submitted,

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